

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2951 OF 2002

M/s. Institute for Design
of Electrical Measurement
Instruments. .. Petitioners.

VS.

Kamgar Utkarsha Sabha
& Anr. .. Respondents.

Mr. V.P. Vaidya for petitioners.
Mr. M.S. Topkar a/w T.R. Yadav i/by Kiran
Bapat for respondents.

CORAM : S.U. KAMDAR, J.

DATE : 17th April, 2006.

P.C.

. The present petition is challenging the order dated 18.8.2002 passed by Industrial Court by which the complaint of the respondent is allowed and it is declared that the respondents have engaged in unfair labour practices under item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the MRTU & PULP Act).

It has been further directed that the petitioner should pay the wages to the respondents for the overtime work done by them on each Saturday from 1st February 1983 till 15th October, 1987 at twice the normal rate of wages for the extra work carried out by the said employees.

2. Some of the relevant facts of the present case are as under :-

3. The timing of the work of the employees of the company was from 9.15 a.m. to 5.15 p.m. with half an hour lunch break since 1975. On 28.12.1982, the circular was issued introducing six days a week and the working hours were changed to 9.00 a.m. to 5.00 p.m. every day including Saturdays. Thus there was a change in service condition of the employees. The said change was challenged by the respondent union by filing the industrial disputes under the provisions of the Industrial Disputes Act, 1947 and reference was made being Reference (IT) No. 167 of 1983. The Industrial Tribunal allowed the said reference and held that the change introduced in the working hours of the employees was illegal and directed the petitioner to withdraw the said change. The said Award was passed on 10.8.1987.

4. The respondent union thereafter filed a complaint under the MRTU & PULP Act alleging that

the award was not implemented. The said complaint was allowed. In a writ petition which was preferred to this Court against the said order a consent order was passed on 1.4.1999 by which the said complaint was remanded back to the Industrial Tribunal with a direction to determine what should be the amount payable towards overtime wages for the period 1983 to 1987 i.e. during the period when the reference was pending before the Industrial Tribunal. In respect of the period subsequent to the passing of the award i.e. after 1987 the matter was settled between the parties with the direction that the petitioner will pay overtime at the rate of double the normal rate of wages. On remand, the Industrial Court has heard the matter afresh. By the impugned order the Industrial Court has directed that the petitioners are liable to pay overtime wages at double the rate of normal wages to the respondent workmen. It is this order which is challenged before me in the present petition.

5. The first contention advanced by the learned counsel for the petitioner is that in the impugned order the petitioner has been directed to make payment of overtime at the double the rate of normal wages but during the said period it was not prescribed anywhere that the employees are entitled to double the rate for overtime work put in by them due to change of working hours which has not been

found to be illegal. It is his contention that what should be the amount of overtime payable is itself a dispute which requires to be adjudicated between the parties and, therefore, the complaint under item 9 of Schedule IV of the MRTU & PULP Act is not tenable and the said complaint ought to have been dismissed by the Industrial Court. He has further submitted that under the Shops and Establishments Act and under the Factories Act the overtime is payable provided the employee has already put in 48 hours a week and thus He has submitted that in the present case even after the change was effected the respondent employees have not put in 48 hours a week, they were not entitled to overtime wages at double the rate of normal wages even under the provisions of the Bombay Shops and Establishments Act and/or Factories Act. However, the learned counsel for the respondents has drawn my attention that in fact there was a settlement arrived at between the petitioner and the respondent. This being circular dated 7.6.1986 Exhibit 14 which specifies the double the rate of overtime to the workmen in the workshop when they work for more than 9 hours on any day or for more than 45 hours in a week. In para 18 of the said impugned order it has been held that in fact there was a practice prevailing in the case of the petitioner company itself to pay overtime at double the rate and on the aforesaid basis the Industrial Tribunal has fixed

the overtime rate at the double the rate of normal wages for the period 1.2.1983 to the date of the award in 1987. The learned counsel for the petitioner has relied upon the judgment of the Apex Court in the case of Philips India Ltd., and Labour Court, Madras and others, reported in 1985 I LLN page 6333 and has contended that the overtime amount requires adjudication and, therefore, the application could not have been granted under the provisions of the MRTU & PULP Act. In so far as the aforesaid submission is concerned, I am not inclined to accept the submission of the petitioner. Firstly, there is no dispute that there is a change in the service conditions and the said change has been held to be illegal and an award has been passed. There is also not any dispute that the parties have agreed that after the period of the award the overtime payable to the employees will be double the rate of normal wages. The dispute is only raised for a period during 1983-87. The Industrial Court has after considering the record and particularly the office circular itself has come to the conclusion that there is a policy of the petitioner to pay overtime at the double the rate of normal wages and, therefore, the petitioner is liable to pay the overtime at double the rate of normal wages. In that view of the matter, I do not find any error in the order impugned herein of fixing the overtime rate at double the rate of

normal wages. The contention that only after 48 hours are completed under the provisions of the Factories Act or Bombay Shops and Establishments Act that the person is entitled to double the rate of overtime has to be rejected because the petitioners themselves have by a circular accepted that even if the work is more than 45 hours, they will be paid overtime at double the rate of normal wages as mentioned in the impugned order of the Industrial Court. In that light of the matter, I find no substance in the present petition.

6. In so far as the second contention is concerned that there was a reduction of 1/2 an hour while making the Saturday as working day and, therefore, there should be a set off given to the petitioner for reduction in the period while computing the number of hours in the week and overtime should be fixed accordingly. In so far as this contention is concerned, the Industrial Court has held that there is no substance in the said contention because the Saturday is taken as a full day work. Secondly the reduction in working hours to the benefit of employees was not a subject matter of challenge in the adjudication of reference before the Industrial Court in the reference preferred challenging the charge in service condition. In my opinion, under Article 226 of the Constitution of India no interference is called for in the order of

the Industrial Court. In that light of the matter, there is no substance in the present petition. Accordingly the petition fails and the same is dismissed. No order as to costs.